


STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
MANUAL CHANGE TRANSMITTAL
RW 0001A (REV. 10/93)

☒ R/W MANUAL CHANGE
(1993 Edition)

RWMC- 19

☐ PROCEDURAL HANDBOOK
(1984 Edition)

RWPH- _____
TRANSMITTAL # _____

TITLE Relocation Appeals	APPROVED BY 	DATE ISSUED June 19, 1995
		PAGE 1 OF 1
SUBJECT AREA Chapter 10 Relocation Appeals	ISSUING UNIT Acquisition & Relocation Assistance Branch	

SUMMARY OF CHANGES

Sections 10.02.01.01, et seq., Appeals

PURPOSE: To transmit revised Sections 10.02.01.00 et seq., of the Right of Way Manual.

BACKGROUND: The Relocation Appeals process has been streamlined by adopting a Single Hearing Officer Approach to the resolution of the majority of appeals by persons (residential and non-residential) displaced by a transportation project. The existing Relocation Appeals Board is retained as an option for resolving the most complex relocation appeals. Right of Way Manual Sections 10.02.01.01 et seq., have been revised accordingly.

PROCEDURES: Right of Way Manual Sections 10.02.01.01 et seq., have been revised to add the Hearing Officer as an alternative to the existing Relocation Appeals Board for resolution of appeals.

EFFECTIVE DATE: Effective immediately

MANUAL IMPACT:

- Insert the attached pages in the Manual.
- Record the action on the Revision Record.

REVISION SUMMARY

<u>Chapter</u>	<u>Remove Old Pages</u>	<u>Insert New/Revised Pages</u>	<u>Replace Interim Change No.</u>
10	Page 10.02-1 10.02-3 10.02-5	Page 10.02-1 (Rev. 6/95) 10.02-1 " " 10.02-5 " "	N/A

10.02.00.00 APPEALS

10.02.01.00 General [49 CFR 24.10(a)]

"The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part."

The right of appeal shall be described in all RAP explanatory printed matter that is distributed at public hearings or to individual displacees. The right of appeal shall also be mentioned whenever verbal presentations on relocation assistance are made at public hearings.

On relocation calls the RAP Agent shall explain how to make an appeal and give the following information to displacee:

- Displacee has the right to appear personally at all hearings.
- Right of appeal relates only to RAP and not to the market value of the property or to the terms of the Right of Way Contract.
- An appeal decision will be issued in writing within 60 days of reviewing all material necessary to render an opinion.
- Relocation Assistance Appeal Form will be provided to displacee upon request (Form RW 10-6).
- Displacee has the right to pursue legal action after completing the appeal process.

10.02.02.00 Appealable Actions [49 CFR 24.10(b)]

"Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under §24.106 or §24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form."

The replacement housing valuation shall be updated whenever a displacee appeals the amount

of the replacement valuation.

10.02.03.00 Time Limit [49 CFR 24.10(c)]

"The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim."

The Department must receive the appeal no later than six months following the deadline for filing a claim for relocation payment.

10.02.04.00 Right to Representation [49 CFR 24.10(d)]

"A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense."

10.02.05.00 Review of Files [49 CFR 24.10(e)]

"The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws."

The District shall classify the following materials as confidential and shall not allow the appellant to inspect or copy them.

- Relocation case file diary.
- Correspondence to and from the Legal Division.
- Additional materials the Legal Division determines to be confidential and unavailable to the appellant, on a case-by-case basis.

The District shall set a reasonable time limit for appellant to review the file, considering that the Legal Division must first review the case file to determine which material is confidential and which is not. The District may charge

reasonable fees for any copied material in accordance with Departmental policy.

10.02.06.00 Scope of Review [49 CFR 24.10(f)]

"In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal."

10.02.07.00 Determination and Notification After Appeal [49 CFR 24.10(g)]

"Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review."

10.02.08.00 Agency Official [49 CFR 24.10(h)]

"The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed."

10.02.09.00 Appeal Process

10.02.09.01 Filing of Appeal

A person who is dissatisfied with a payment or determination of eligibility must file a Relocation Assistance Appeal Form (Form RW 10-6) or other written form of appeal with the DDC-RW.

10.02.09.02 Direct Appeals to Statewide Relocation Appeals Hearing Officer or Board

Only the Statewide Relocation Appeals Hearing Officer or Board in RW&AM may hear the following categories of appeals:

- Constructive occupancy.

- Waiver of time limits contained in the regulations where the limits contained in the regulations where the regulations do not specifically provide for such exceptions.
- Claims originally disapproved at the Headquarters level.
- Loss of eligibility due to sale of excess or rescinded route property or due to suspended routes.

For these categories of appeals, the District will provide the information in the table entitled "Required Information - Relocation Appeals" to RW&AM within 10 working days of receiving the appeal.

10.02.09.03 Promissory Estoppel

The Doctrine of Promissory Estoppel holds that a promisor is held to a promise if the following conditions are met:

- A promise is made, representing a material fact that something would happen, normally to the benefit of the promisee.
- The promisor could reasonably expect to induce a substantial action on the part of the promisee. In other words, the representation made was such that a person would reasonably believe it.
- The promisee actually takes a substantial action in reliance on the representation, and the promisee substantially changed their position in reliance on the representation.
- A monetary loss, one that is actually suffered or one that will be suffered by the promisee, can only be avoided by enforcement of the promise made.

Steps in the appeal process are shown in the table entitled, "Promissory Estoppel Issue Appeal Process."

PROMISSORY ESTOPPEL ISSUE APPEAL PROCESS		
Step	Responsible Unit	Process
1	District RAP	Reviews appeals and either concurs or does not concur.
2a		If District concurs, forwards the appeal to the Program Manager, RW&AM, or designee, with a recommendation.
2b		If District does not concur, forwards the appeal to the Statewide Relocation Appeals Hearing Officer or Board for hearing.
3	RW&AM	Reviews appeals and either concurs or does not concur.
3a		If RW&AM concurs with the District recommendation, notifies the District to make payment as proposed.
3b		If RW&AM does not concur with the District recommendation, forwards the appeal to the Statewide Relocation Appeals Hearing Officer or Board for hearing.

10.02.09.04 District Level Hearing (Optional)

It is recommended that the District transmit all appeals directly to the Statewide Relocation Appeals Hearing Officer or Board for decision so appeals can be resolved expeditiously. However, the District may hear appeals first, except for the categories of appeals set forth above, and the District may form a District Appeals Board to make recommendations to the DDC-RW.

The appellant has the right to present oral and written evidence at the District hearing. When the District-level appeal is completed, the District shall provide the appellant with a written statement containing at a minimum the following:

- State the District's decision and the reason for the decision citing applicable rules and regulations.
- Advise the appellant that the appeal is automatically referred to the Director of Transportation, or designee, and the Statewide Relocation Appeals Hearing Officer or Board if it is denied in part or in whole, either as to eligibility or amount.

A copy of the written summary and statement shall be placed in the appellant's case file.

10.02.09.05 Statewide Level Hearing

The Director of Transportation designates a Statewide Relocation Appeals Hearing Officer or Board to investigate appeals and make written recommendations to the Director or designee.

The District provides the information in the following table entitled "Required Information-Relocation Appeals" to RW&AM within 10 working days of:

- District level denial of an appeal, or
- District receipt of an appeal if the Statewide Relocation Appeals Hearing Officer or Board takes original jurisdiction.

NOTE: Copies of documents provided by the District must be legible. Unreadable handwritten diary entries shall be typed.

The District is expected to recommend a solution on the appellant's claim and state clearly the reasons for its position in the appeal transmittal memorandum.

Upon RW&AM receipt of an appeal from a District, a RW&AM staff member will meet with the Hearing Officer (an attorney from the Department's Legal staff) to determine if the appeal is complex or non-complex. The most complex appeals will be resolved by the Department's Relocation Appeals Board; all others will be resolved by a Hearing Officer.

The Hearing Officer or Appeals Board will then schedule a hearing within 30 days of receipt of the above information.

The appellant has the right to present oral and written evidence at the appeals hearing.

The District will send a knowledgeable person(s) to the appeals hearing to explain relocation procedures and replacement valuation processes. Since the Appeals Hearing Officer or Board will consider such factors as work consistency and quality at the hearing, the presence of relocation assistance and/or housing valuation personnel to provide knowledgeable and professional testimony will expedite the process.

If the hearing results in the need for additional valuation analysis or other relocation assistance appeal investigations, the District must respond with due diligence.

The decision of the Director, or designee, and the Hearing Officer's or Board's recommendation are provided to the appellant and the District within 60 days of the hearing. If the full relief requested by appellant has not been granted, the appellant is advised of their right to seek judicial review. Statements in the letter from the Director, or designee, to appellant such as "a representative of the Department will assist you in preparing and filing your claim" shall be construed by the District as an instruction.

10.02.10.00 Appellant's Travel Expenses

Payment of appellant's travel expenses are in accordance with rules applicable to State employees and the following:

- No expenses are paid if travel distance is 50 miles or less from appellant's current residence to the hearing site (by the most direct route, not airline).
- No expenses are paid to anyone other than the appellant(s) - no lawyers, friends, witnesses, or family. Payment is limited to those persons who have the right to relocation benefits or have appealed to be declared eligible for benefits.
- Per diem expenses of eligible appellants are paid on the basis of current Board of

Control rules and regulations.

- A single (one) appellant receives the same per diem expenses as a State employee on an incurred basis.
- For husband and wife appellants, the second person's per diem expenses are limited to the standard reimbursement rate for meals.
- For roommates, business partners, etc., each appellant is entitled to claim full per diem rates with appropriate documentation of separate accommodations.
- Mileage expenses are paid on the basis of the cost of normal round-trip airfare or established Board of Control rate per mile for use of appellant's private car, whichever is less.

Only expenses incurred to appear before a formal Appeals Board or Hearing Officer are eligible for payment. Informal meetings and such do not qualify an appellant for payment of any expenses.

All appellant expense claims are charged to the project (Phase 2 EA).

10.02.11.00 Resubmission of Appeals

If appellant has not performed those acts necessary to establish eligibility pursuant to prescribed procedures and the appeal has been heard and denied, no additional appeals are permitted until appellant has established such eligibility. After appellant has established eligibility, appellant shall be allowed one additional appeal.

10.02.12.00 Payment of Approved Claims

Copies of the decision and recommendation shall be attached to any claim for payment submitted pursuant to an appeal decision.

REQUIRED INFORMATION - RELOCATION APPEALS	
Category	Specifics
Basic Identifying Data	County, route, parcel number(s) Expenditure authorization Appraisal report number Name of property owner if other than appellant Street address of property acquired
Replacement Property Data	Street address DS&S Inspection Report (if available)
Basic Acquisition Data (up to date of appeal)	Dates of First Written Offer, R/W Contract signed on behalf of State Close of Acquisition Escrow Right of Entry Order for Possession Final Order of Condemnation
Dates affecting eligibility not provided elsewhere	Acquisition/occupancy of acquired property by appellant Date appellant vacated property Date appellant purchased/occupied replacement property Trust deeds Trust deed notes, if increased interest payments are involved
Data pertinent to payment calculation if the payment is in dispute and copies of Replacement Housing Valuation Reports	Cost of replacement property Price paid or offered on purchase of property Replacement rental rates Actual rental rates Economic rental rates Interest rates Remaining trust deed balance New trust deed amount Certified copy of buyer's closing statement
Copies of Appraisal Form RW 7-9	Include related pages describing the subject property.
Status of any other relocation payments to appellant	Such as dates and amounts claimed but not paid or not yet claimed.
Information on any other potential claimant residing in the unit	
District's comments on complaints and allegations contained in appeal letters	Include copies of any correspondence referred to by appellant.
Copies of diaries	All relocation diaries and pertinent negotiation diaries
District's recommended disposition of the appeal	
Basis for revised payment if the amount of replacement housing or rental payment is the issue and there is a significant change in the amount of such payment	Tabulate comparable properties used in the determination by address and show most probable sales price or rental rate. Indicate if comparables are comparable or superior to subject as to location, size, quality, and condition. Provide a narrative review discussing comparability of replacement properties and covering elements of a comparable replacement dwelling.
Reference to Chapter Section(s) that apply to Appeal	

10.03.00.00 RELOCATION NOTICES

10.03.01.00 General Information Notice [49 CFR 24.203(a)]

"As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's relocation program which does at least the following:

- (1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).*
- (2) Informs the person that he or she will be given reasonable relocation advisory services including referrals, to replace properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.*
- (3) Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section) [X-Ref. 10.03.03.00], and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement has been made available.*
- (4) Describes the person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part."*

The District is required to advise potential displacees of possible RAP benefits as soon as they are identified. The appraiser completes the Parcel Occupancy Data Sheet (Form RW 7-2) at the first meeting or contact when a primary or alternate appraisal indicates a displacement of people, businesses, or personal property. This is true whether the displacement would result from the taking of the right of way or from the effect of the taking on the remainder.

A displacement may occur even though there are no severance damages to the real property (consequential displacement).

The appraiser forwards the completed Parcel Occupancy Data Sheet to the RAP Unit. The RAP Unit mails a Relocation Assistance Information Letter (Form RW 10-7), a Title VI (Civil Rights) Survey Form (Form RW ____), a Title VI Brochure, and a return envelope addressed to District P&M to each party listed and owners not previously contacted by the Appraisal Unit.

10.03.02.00 Notice of Relocation Eligibility [49 CFR 24.203(b)]

"Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in §24.2(k)) [X-Ref. 10.01.09.10] for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance."

10.03.02.01 Notice of Intent to Acquire (NIA)

NIAs (Forms RW 10-8, 10-9, and 10-10) are issued to owners and tenants to:

- Protect the eligibility of prospective displacees who need to move prior to the first written offer on the parcel.
- Prevent dual eligibility.
- Assure that all persons are fully aware of relocation assistance benefits and requirements.